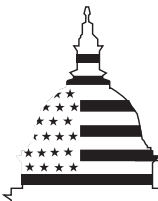


GAO

Report to the Chairman, Caucus on
International Narcotics Control, U.S.
Senate

CUSTOMS SERVICE

Effects of Proposed Legislation on Officers' Pay



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Abstract This report responds to your request that we review the effects of proposed legislation on U.S. Customs Service officers pay. 1 As agreed with your staff, we primarily focused on the provisions in H.R. 1833, 2 introduced in the 106th Congress, that would affect Customs officers night differential pay. In May 1999, the House of Representatives passed H.R. 1833, which contained these pay amendments. In August 1999, the Senate passed another version of H.R. 1833, which did not contain the pay provisions. Similar provisions were introduced, but not passed, in the 105th Congress, and such provisions may be reintroduced in the 107th Congress. The pay provisions in H.R. 1833 would amend the 1911 Act, as amended, 3 governing Customs officers overtime and premium pay, 4 and they are intended to more closely align night differential pay for Customs officers with that of other federal agencies. A primary issue of concern is the extent to which the pay provisions in H.R. 1833 would reduce Customs officers night differential pay.		Monitoring Agency Acronym
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Abbreviations

CMC	Customs Management Center
COPRA	Customs Officers Pay Reform Amendments
COSS	Customs Overtime and Scheduling System
JFK	John Fitzgerald Kennedy International Airport
LAX	Los Angeles International Airport
NTEU	National Treasury Employees Union
OMB	Office of Management and Budget



United States General Accounting Office
Washington, DC 20548

January 31, 2001

The Honorable Charles E. Grassley
Chairman, Caucus on International
Narcotics Control
United States Senate

Dear Mr. Chairman:

This report responds to your request that we review the effects of proposed legislation on U.S. Customs Service officers' pay.¹ As agreed with your staff, we primarily focused on the provisions in H.R. 1833,² introduced in the 106th Congress, that would affect Customs officers' night differential pay. In May 1999, the House of Representatives passed H.R. 1833, which contained these pay amendments. In August 1999, the Senate passed another version of H.R. 1833, which did not contain the pay provisions. Similar provisions were introduced, but not passed, in the 105th Congress, and such provisions may be reintroduced in the 107th Congress. The pay provisions in H.R. 1833 would amend the 1911 Act, as amended,³ governing Customs officers' overtime and premium pay,⁴ and they are intended to more closely align night differential pay for Customs officers with that of other federal agencies. A primary issue of concern is the extent to which the pay provisions in H.R. 1833 would reduce Customs officers' night differential pay.

Our objectives were to (1) compare current law to proposed legislative changes in H.R. 1833 dealing with Customs officers' pay, (2) determine the

¹Throughout this report, when we use the term "Customs officers," as defined under current law (19 U.S.C. 267 (e)), we are referring to both Customs inspectors and canine enforcement officers.

²An Act to authorize appropriations for the United States Customs Service, and for other purposes.

³Act of February 13, 1911, 36 Stat. 899, 901 (current version at 19 U.S.C. 267 (b)). In a 1991 report, we recommended that Congress reevaluate the basis for computing premium pay, including night differential pay for Customs officers and that Customs improve its administration of overtime. See *Customs Service: 1911 Act Governing Overtime Is Outdated* (GAO/GGD-91-96, June 14, 1991). The law was subsequently amended, as discussed later.

⁴The term "premium pay" means differential pay for regularly scheduled work on Sundays, holidays, and at night as authorized under current law (19 U.S.C. 267 (b)).

extent to which Customs officers' pay would increase or decrease if proposed changes were enacted, and (3) obtain Customs and the National Treasury Employees Union's (NTEU) views on the proposed changes. Our review focused primarily on analyzing the effects of sections 123 (a) and (b) of subtitle C of H.R. 1833 dealing with night differential pay. In addition to our analysis, we also obtained views on sections 123 (a) and (b) and section 121, which addresses Customs officers' annual overtime and premium pay cap.

To address our first objective, we compared current law and related federal regulations along with a pertinent arbitration ruling to the proposed changes in H.R. 1833 to identify differences and determine how the changes would potentially affect Customs officers' night differential pay. To address our second objective, we analyzed the Customs Overtime and Scheduling System (COSS) database—which contains detailed information on officers' overtime and premium pay (Sunday, holiday, and night differential)—to capture officers' night differential pay earnings for fiscal year 1999. We analyzed data nationwide and then more specifically on five judgmentally selected Customs ports of entry.⁵ We then determined what the officers' night differential earnings would have been if sections 123 (a) and (b) of H.R. 1833 had been in effect during fiscal year 1999.

Although the patterns of hours worked in future years may change, and our five selected ports are not representative of all ports, our analysis is an indicator of the changes that could occur in pay if provisions such as 123 (a) and (b) were enacted. To address our third objective, we obtained documentation from the Commissioner of Customs and written comments from the NTEU national president. We also interviewed Customs managers, supervisors, and officers, and NTEU chapter presidents at the five selected ports. More specific information on our objectives, scope, and methodology is discussed in appendix I.

Results in Brief

Our comparison of current law and related implementing regulations and rulings to proposed legislative changes in H.R. 1833 showed how Customs officers' night differential pay would be affected by the proposed changes.

⁵We judgmentally selected, based on the number of air and land passengers processed, three large airports, one medium airport/seaport, and one large land border crossing. The ports selected were John Fitzgerald Kennedy International Airport (JFK), Los Angeles International Airport (LAX), Miami International Airport, Baltimore-Washington International Airport and Seaport, and San Ysidro land border crossing near San Diego, CA.

Section 123 (a) would override a 1995 arbitration ruling that interpreted current law and would prohibit Customs officers from receiving night differential pay when they take annual, sick, or other leave from regularly scheduled night differential work. Section 123 (b) would change the times and reduce the number of hours in a day that Customs officers could earn night differential pay. Night differential pay would be limited to hours worked between 6 p.m. and 6 a.m. and also to hours worked on a midnight-to-8 a.m. shift. Section 121, a related section, would remove premium pay, including night differential pay, from the calculation of the \$30,000 fiscal year overtime and premium pay cap that Customs officers may not exceed.

Our analysis of Customs data showed the extent to which sections 123 (a) and (b) of H.R. 1833 would affect Customs officers' pay. Nationwide, our analysis of the COSS database showed that 6,510 Customs officers received about \$13.5 million in night differential pay in fiscal year 1999. Over 80 percent of the \$13.5 million in night differential pay was concentrated in six shifts, which generated \$11 million in night differential pay. Had sections 123 (a) and (b) of H.R. 1833 been in effect for these six shifts during fiscal year 1999, Customs officers would have received about \$6 million in night differential pay, about \$5 million less than what they actually received that year. In addition, of the 332 ports (including subports and headquarters offices) accumulating COSS data, 10 had night differential pay of \$400,000 or more, while 106 had no night differential pay for fiscal year 1999.

Our analysis of the COSS database for five selected ports showed that nearly all (97 percent) of the 1,377 Customs officers receiving night differential pay would have received less night differential pay had sections 123 (a) and (b) of H.R. 1833 been in effect during fiscal year 1999. Section 123 (b), which would reduce the number of hours for which night differential pay could be earned, had the greater impact on pay. Customs officers working at ports with shifts starting in the early afternoon, such as those at JFK, would have had the largest pay decreases.

The amount of pay decreases and number of Customs officers affected varied across the five ports we analyzed. For example, of the 464 Customs officers who received night differential pay at JFK during fiscal year 1999, 148 (32 percent) would have had their night differential pay decreased by over \$3,000 had sections 123 (a) and (b) of H.R. 1833 been in effect. In contrast, the proposed changes would not have had as much of an impact on Customs officers working at the Baltimore-Washington International Airport and Seaport, a smaller port with fewer officers earning night

differential pay. Of the 53 Customs officers who received night differential pay at the Baltimore-Washington International Airport and Seaport, 44 (83 percent) would have had their pay decreased by \$500 or less if the pay provisions in H.R. 1833 had been enacted.

In the aggregate, 1,331 of the 1,377 Customs officers receiving night differential pay at the five ports would have received about \$1.7 million less pay during fiscal year 1999. The amount of decreased night differential pay had sections 123 (a) and (b) been in effect ranged from a low of about \$18,000 for officers at the Baltimore-Washington International Airport and Seaport to a high of about \$1 million at JFK.

In contrast, but to a lesser extent, 122 officers at four of the five selected ports would have received net increases in night differential pay totaling \$16,943 by the end of fiscal year 1999 had the proposed changes been in effect. The net increases primarily would have resulted from early morning shifts. Under section 123 (b), Customs officers working shifts starting at 4 a.m. and 5 a.m. would receive night differential pay for hours worked between 4 a.m. and 6 a.m., which they do not receive under current law.

The views we obtained on the pay provisions in H.R. 1833 from affected parties—Customs and NTEU officials, along with managers, supervisors, and officers—provided positions and insights on the provisions. The Commissioner of Customs and the NTEU national president, along with Customs supervisors and officers and NTEU chapter presidents at the five ports, commented that they generally opposed sections 123 (a) and (b) of H.R. 1833. These provisions would provide Customs with the authority to eliminate Customs officers' night differential pay while on leave and reduce the number of hours in a day that officers could earn night differential pay. In contrast, Customs field managers at the five ports had varying views on these two provisions; some Customs managers supported the sections, while others opposed them. In addition, many of the Customs managers, supervisors, and officers and NTEU officials said that because section 123 (b), in particular, would decrease officers' night differential pay significantly, its implementation would lower morale and create problems in staffing night shifts at Customs ports.

NTEU's national president, along with Customs field managers, supervisors, and officers and NTEU chapter presidents we interviewed at the five ports, generally supported section 121 of H.R. 1833. For the most part, they viewed this section as an opportunity for Customs officers to potentially earn more overtime because premium pay, including night differential pay, would not count toward the annual pay cap. Customs

headquarters officials, however, did not provide us with their views on section 121. In commenting on this report, Customs said that the Office of Management and Budget (OMB) was the appropriate agency for providing the administration's position on legislative matters. OMB opposed section 121 because it believed this section should be considered in the context of achieving overall consistency in pay between Customs and other similarly situated inspection service agencies.

Background

The U.S. Customs Service has a diverse mission spanning a large geographic area. Customs responsibilities include (1) collecting revenue from imports and enforcing Customs and other U.S. laws and regulations, (2) preventing the smuggling of drugs into the country, and (3) overseeing export compliance and money-laundering issues. At the close of fiscal year 1999, Customs had a full-time permanent workforce of about 19,000 employees—including about 8,000 Customs officers (inspectors and canine enforcement officers). These employees carry out Customs mission at its headquarters, 20 Customs Management Centers, 20 Special Agent-in-Charge offices, 301 U.S. ports of entry, 5 Strategic Trade Centers, and over 25 international offices. Customs officers processed over 21 million import entries, with a value of \$977 billion; 137 million conveyances;⁶ and 480 million land, sea, and air passengers in fiscal year 1999.

Premium Pay Process

Although our review focused on night differential pay, which is part of premium pay, we are also providing some background information on all premium pay components (Sunday, holiday, and night pay) and data on overtime pay because these items are often reviewed collectively for oversight purposes. In addition to base and overtime pay, Customs officers can earn additional compensation through a premium pay (Sunday, holiday, and night differential pay) system. This system is governed by pay amendments in the Customs Officers Pay Reform Amendments (COPRA), which was part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66; 107 Stat. 312, 668).⁷

⁶Conveyances include aircraft, trucks, trains, buses, privately-owned vehicles, and ocean vessels.

⁷In 1993, Congress made major changes to Customs officers' pay by enacting COPRA, which amended the 1911 Act governing officers' overtime and premium pay.

Customs officers earn pay (base pay plus premium pay) for regularly scheduled work on Sundays, holidays, and nights as follows:

- Sunday pay is 1.5 times the basic hourly rate (50-percent premium);
- holiday pay is 2 times the basic hourly rate (100-percent premium); and
- night pay is 1.15 or 1.20 times the basic hourly rate (15- or 20-percent differential); that is
 - 1.15 if the majority of hours worked were between 3 p.m. and midnight and
 - 1.20 if the majority of hours worked were between 11 p.m. and 8 a.m.

As shown in table 1, according to Customs, its overtime and premium pay expenditures for fiscal years 1995 through 1999 ranged from a total of \$106.3 million to \$143.1 million, with night differential pay ranging from \$8.9 million to \$13.6 million. By law, combined overtime and premium pay currently cannot exceed a fiscal year cap of \$30,000 for each Customs officer.⁸

Table 1: Customs Overtime and Premium Pay Expenditures, Fiscal Years 1995-99

Dollars in millions				
Fiscal year	Overtime	Premium pay		Total
		Night differential	Holiday and Sunday	
1995	\$91.4	\$8.9	\$6.0	\$106.3
1996	99.8	9.5	8.8	118.1
1997	107.3	9.1	8.4	124.8
1998	113.6	12.1	10.5	136.2
1999	118.3	13.6 ^a	11.2	143.1

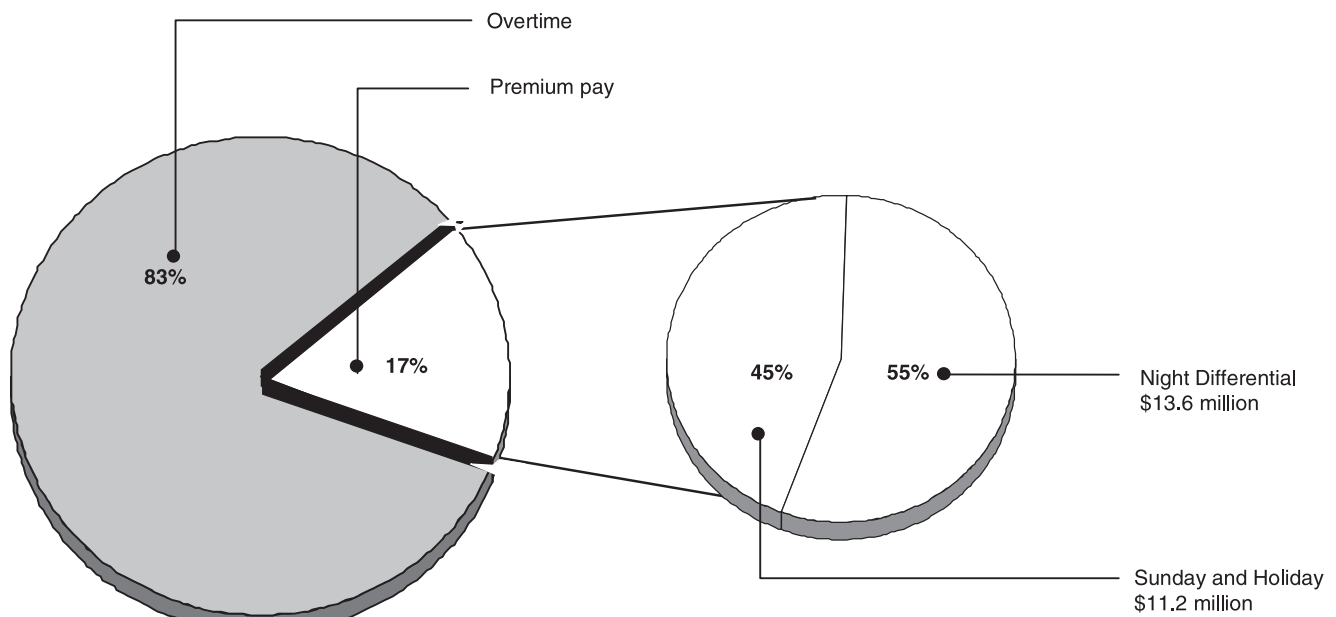
^aOur analysis of COSS data, subsequently discussed in this report, showed \$13.5 million in night differential pay for fiscal year 1999. This table shows \$13.6 million. The difference may be due to rounding, or the data in this table may originate from a Customs data source other than COSS.

Source: U.S. Customs Service.

Figure 1, below, illustrates fiscal year 1999 expenditures for overtime and premium pay, including those for night differential pay.

⁸Although 19 U.S.C. 267(c)(1) sets the cap at \$25,000, the annual Treasury appropriation laws for fiscal years 1998 through 2001 have increased the cap to \$30,000. For example, for fiscal year 1999, see P.L. 105-277, 112 Stat. 2681-480, 486 (1998).

Figure 1: Overtime and Premium Pay Expenditures for Fiscal Year 1999



Source: U.S. Customs Service.

In addition, as shown in table 2, from fiscal years 1995 through 1999, total hours of overtime and night differential worked by Customs officers ranged from approximately 2.5 million to 3.1 million overtime hours and from approximately 3.3 million to 4.5 million night differential hours.

Table 2: Customs Officers’ Overtime and Night Differential and Hours Worked, Fiscal Years 1995-99

Fiscal year	Total officers ^a	Overtime		Night differential	
		Officers	Hours	Officers	Hours
1995	8,158	7,314	2,497,752	5,678	3,252,481
1996	8,425	7,597	2,784,915	5,846	3,462,484
1997	9,006	8,247	2,973,571	6,247	3,321,258
1998	9,092	8,442	3,093,429	6,600	4,261,718
1999	9,137	8,489	3,088,450	6,545 ^b	4,484,076

^aTotal officers represents the number of officers that worked sometime during the year. It does not represent the number at the close of the fiscal year.

^bOur analysis of COSS, subsequently discussed in this report, showed 6,510 officers receiving night differential pay during fiscal year 1999. The source for the data for this table is Customs Premium Overtime Pay Inquiry Systems. The difference of 35 officers is not significant and may be attributable to the different sources of the data.

Source: U.S. Customs Service data.

Comparison of Current Law to Proposed Night Differential Pay Changes

Section 123 (a) and (b) of H.R. 1833 proposed changing the way that night differential pay is earned and calculated. Section 123 (a) would override a 1995 arbitration ruling that interpreted law and would provide Customs with the authority to prohibit Customs officers from receiving night differential pay when they take annual, sick, or other leave from regularly scheduled night work. Section 123 (b) would change the times and reduce the number of hours in a day that Customs officers could earn night differential pay. This section, as discussed in more detail in table 3 below, would replace the current “majority of hours” provision, which allows night differential pay for shifts starting as early as 12 noon and as late as 3 a.m. Instead, section 123 (b) would limit night differential pay to hours worked between 6 p.m. and 6 a.m. and on a 12 midnight-to-8 a.m. shift.

Section 121 would change the way the annual overtime and premium pay (Sunday, holiday, and night differential pay) cap is calculated. It would remove premium pay, including night differential pay, from the annual pay cap that Customs officers cannot exceed. Table 3 describes and compares current law with proposed changes to night differential pay and the annual pay cap.⁹ As noted in table 3, section 123 (b) would eliminate the “majority of hours” provision for night differential pay. Instead, night differential pay

⁹In a 1996 report, the Department of the Treasury, Office of Inspector General issued a report recommending that Customs seek legislative changes to officers’ night differential pay. See *Customs Officers Pay Reform Amendments (COPRA)* (OIG-96-094, Sept. 13, 1996).

would be limited to actual hours worked between 6 p.m. and 6 a.m. and for actual hours worked on a 12 midnight-to-8 a.m. shift.

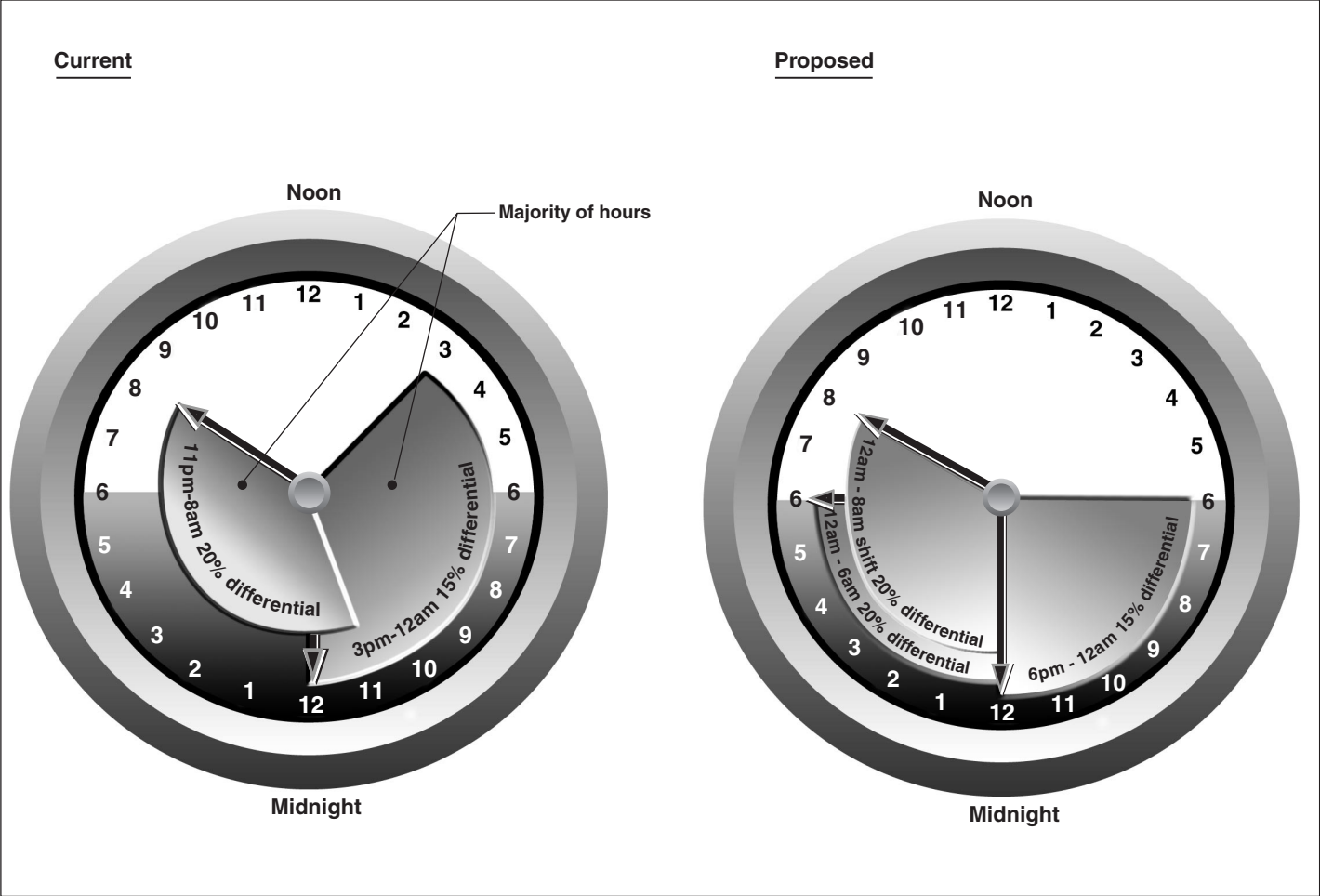
Table 3: Comparison of Current Law to Proposed Changes for Certain Overtime and Premium Pay Issues, Including Those Relating to Night Differential Pay

Issue	Current law and practice	Proposed Subtitle C of H. R. 1833
Payment of premium pay, including night differential pay, when a Customs officer is on annual or sick leave	A 1995 arbitration ruling interpreting current law requires Customs to pay officers night differential pay when they are on annual, sick, or other leave from regularly scheduled night differential work. P.L. 105-277 (112 Stat. 2861-518) permanently restricts Customs from paying Sunday premium pay to an employee if the employee has not actually performed work on Sunday. In addition, Customs officers are not paid holiday premium pay when they are on leave and do not actually work the holiday.	Section 123 (a) would provide Customs with authority to prohibit Customs officers from receiving any premium pay, including night differential pay, when on leave from regularly scheduled work that entitled them to premium pay. As such, the section would override the arbitration ruling and prohibit Customs officers from receiving night differential pay while on leave.
Times and number of hours in a day that night differential pay can be earned	<p>Current law (19 U.S.C. 267(b)(1)) provides that a Customs officer can receive night differential pay at rates above base pay for an entire 8-hour shift when the “majority of hours” worked falls within certain prescribed hours as follows.</p> <ul style="list-style-type: none"> When the majority of hours worked occurs between 3 p.m. and 12 midnight, the rate of night differential pay is 15 percent of the base hourly rate for the entire 8-hour shift. As such, shifts starting as early as 12 noon can receive night differential pay for an entire 8-hour shift. When the majority of hours worked occurs between 11 p.m. and 8 a.m., the rate of night differential pay is 20 percent of the base hourly rate for the entire 8-hour shift. As such, shifts starting as late as 3 a.m. can receive night differential pay for an entire 8-hour shift. For a 7:30 p.m.-to-3:30 a.m. shift, the rate of night differential pay is 15 percent of the base hourly rate for 4 hours and 20 percent of the base hourly rate for 4 hours. (This provision addresses a split shift in which the majority of hours worked falls within prescribed hours for both 15-and 20-percent night differential pay.) 	<p>Section 123 (b) would eliminate the “majority of hours” provision. This section would limit night differential pay to hours actually worked between 6 p.m. and 6 a.m. and to hours actually worked on a 12 midnight-to-8 a.m. shift.</p> <ul style="list-style-type: none"> No majority of hours provision. The rate of night differential pay would remain at 15 percent of the base hourly rate but only for actual hours worked between 6 p.m. and 12 midnight. It would reduce the number of hours that night differential can be earned. No majority of hours provision. The rate of night differential pay would remain at 20 percent of the base hourly rate but only for actual hours worked between 12 midnight and 6 a.m. and for actual hours worked on a 12 midnight-to-8 a.m. shift. It would reduce the number of hours that night differential can be earned. While not specifically addressed in the proposed changes, the rate of night differential for this shift (7:30 p.m. to 3:30 a.m.) would be 15 percent for actual hours worked up to 12 midnight, and 20 percent for hours worked after 12 midnight. It would not affect the number of hours available for night differential pay.
Fiscal year annual overtime and premium (Sunday, holiday, and night differential) pay cap	Current law (19 U.S.C. 267 (c) (10) and the annual Treasury appropriation laws for FYs 1998 through 2001) state that the aggregate amount of overtime and premium pay, including night differential pay, that a Customs officer may be paid in any fiscal year may not exceed \$30,000.	Section 121 would remove premium pay from the calculation of the \$30,000 fiscal year cap. As such, the pay cap would be solely an overtime cap.

Source: H.R. Rep. No. 106-161 (1999) and a December 9, 1995, Arbitration Ruling.

Figure 2 illustrates the information discussed in table 3 on the hours officers can earn night differential pay and the percent of night differential earned under current law and proposed legislation.

Figure 2: Night Differential Hours and Rates Under Current and Proposed Legislation



Note: As discussed more specifically in table 3, under current law with the majority of hours provision, officers can earn night differential pay for an entire shift for shifts starting as early as 12 noon through shifts starting as late as 3 a.m. Under proposed legislation, officers earn night differential for actual hours worked from 6 p.m. to 6 a.m. and on a 12 midnight-to-8-a.m. shift.

Source: H.R. Rep. No. 106-161 (1999).

As shown in table 4, elimination of the “majority of hours” provision would decrease the number of available hours that Customs officers could earn night differential pay. However, to a lesser extent, it would also increase

the number of night differential hours available for a few morning shifts. Generally, eliminating the “majority of hours” provision would have the effect of reducing Customs officers’ pay.

Table 4: Comparison of the Number of Night Differential Hours Currently Available and as Proposed

8-hour shift starting and ending time	Current law	Night differential hours		
		Proposed changes	Increase under proposed changes	Decrease under proposed changes
12 noon to 8 p.m.	8	2		6
1 p.m. to 9 p.m.	8	3		5
2 p.m. to 10 p.m.	8	4		4
3 p.m. to 11 p.m.	8	5		3
4 p.m. to 12 midnight	8	6		2
5 p.m. to 1 a.m.	8	7		1
6 p.m. to 2 a.m.	8	8		
7 p.m. to 3 a.m.	8	8		
8 p.m. to 4 a.m.	8	8		
9 p.m. to 5 a.m.	8	8		
10 p.m. to 6 a.m.	8	8		
11 p.m. to 7 a.m.	8	7		1
12 midnight to 8 a.m.	8	8		
1 a.m. to 9 a.m.	8	5		3
2 a.m. to 10 a.m.	8	4		4
3 a.m. to 11 a.m.	8	3		5
4 a.m. to 12 Noon	0	2	2	
5 a.m. to 1 p.m.	0	1	1	
6 a.m. to 2 p.m.	0	0		
7 a.m. to 3 p.m.	0	0		
8 a.m. to 4 p.m.	0	0		
9 a.m. to 5 p.m.	0	0		
10 a.m. to 6 p.m.	0	0		
11 a.m. to 7 p.m.	0	1	1	

Source: GAO analysis of current law—U.S.C. 267 (b) (1)—and proposed changes—section 123 (b) of H.R. 1833.

An example of how the elimination of the majority of hours provision would decrease the number of available night differential hours is as follows: If a Customs officer is scheduled to work a shift that starts at 12 noon and ends at 8 p.m., 5 of the 8 hours of that shift (the majority of hours) occur between 3 p.m. and 12 midnight. As such, because the majority of hours worked falls within the prescribed hours (3 p.m. to 12 midnight) under current law, the Customs officer would earn night differential pay at 15 percent of the base hourly rate for the entire 8-hour shift. Under proposed pay changes in H.R. 1833, the officer working the 12

noon-to-8 p.m. shift would earn night differential pay at 15 percent of the base hourly rate only for the 2 hours worked between 6 p.m. and 8 p.m. In short, the Customs officer would have 6 fewer hours subject to night differential pay under the proposed changes.

The majority of hours provision and the 15- and 20-percent night differential pay rates were included in COPRA, effective January 1, 1994. The rationale for including the majority of hours provision in COPRA is not specifically addressed in the legislative history. House Report No. 103-111 sheds some light on the rationale for increasing Customs officers' night differential pay rates, but it is silent on the majority of hours provision. It states

"Finally, the Committee recognizes the adverse impact on the quality of life of Customs officials [officers] who are required to work regularly scheduled shifts at night or on Sundays and holidays. Accordingly, the bill provides for shift differential compensation at levels substantially greater than applied generally to other Federal employees for such regularly scheduled work." (H.R. Rep. No. 103-111, at 1233 (1993))

Most Customs Officers Would Receive Less Night Differential Pay Under Proposed Changes

Our analysis of the COSS database nationwide showed that had sections 123 (a) and (b) of H.R. 1833 been in effect on the six most frequently used night shifts during fiscal year 1999, Customs officers would have received about \$6 million in night differential pay—about \$5 million less than what they actually received that year. These six shifts accounted for 82 percent of the night differential pay in fiscal year 1999 (see table 10 in app. I). Similarly, our analysis of the COSS database for the five selected ports showed that 1,331 officers (97 percent) would have received less night differential pay had sections 123 (a) and (b) been in effect. These sections would prevent Customs from paying officers night differential pay when on leave and would reduce the number of available hours in a day that Customs officers could earn night differential pay. In particular, our analysis showed that section 123 (b) would cause the greater amount of pay decreases and that the amounts of potential pay decreases and number of Customs officers affected varied by port. For example, officers working shifts starting in the early afternoon, such as those at JFK, would have been most affected by pay decreases if the proposed changes were implemented primarily because the hours worked before 6 p.m. would no longer qualify for night differential pay.

Extent of Night Differential Pay Reductions Varied by Port

Our analysis of Customs night differential pay nationally showed that of the 332 ports (including subports, such as courier facilities) accumulating COSS data during fiscal year 1999, 106 had no night differential pay, 59 paid out less than \$1,000, and 112 paid out over \$10,000. Ten of the ports had night differential payments of \$400,000 or more. JFK topped the list with night differential pay of about \$1.8 million in fiscal year 1999. The top 100 ports and the amount of night differential pay officers at these ports received in fiscal year 1999 are shown in table 9 of appendix I.

During fiscal year 1999, 2,011 Customs officers worked at the five ports we analyzed. Of these officers, 1,377 (68 percent) received night differential pay sometime during the year. As shown in the table below, 1,331 (97 percent) of these officers receiving night differential pay at these five ports would have received less pay had the proposed changes been in effect during fiscal year 1999. By contrast, to a much lesser extent, 122 officers at four of the five ports would have received increased night differential pay had the provisions been in effect.

Table 5: Number and Percent of Customs Officers That Would Have Received Less Pay Had Sections 123 (a) and (b) Been in Effect During Fiscal Year 1999 at Five Selected Ports

Port	Total officers receiving compensation	Total who received night differential pay		Total who would have received less night differential pay	
		No.	%	No.	%
JFK	679	464	68	464	100
LAX	423	238	56	237	99
Miami International Airport	537	391	73	363	93
Balto.-Wash. Int. Airport and Seaport	62	53	85	53	100
San Ysidro land border crossing	310	231	75	214	93
Total	2,011	1,377	68	1,331	97

Source: GAO analysis of Customs data.

The amounts of reduced night differential pay that the 1,331 Customs officers would have received had the proposed changes been in effect varied by port, as shown in table 6. The potentially decreased pay was affected by how frequently officers worked night differential shifts, how many hours of night differential pay would be reduced as a result of proposed changes, and the officers' basic hourly rates of pay.

Table 6: Potential Night Differential Pay Reductions Had Sections 123 (a) and (b) of H.R. 1833 Been in Effect in Fiscal Year 1999 at Five Selected Ports

Potential pay reductions	Officers at each port									
	JFK		LAX		Miami		Balto.-Wash.		San Ysidro border	
	No.	%	No.	%	No.	%	No.	%	No.	%
\$500 or less	97	21	99	42	186	51	44	83	93	43
\$501 to \$1,000	41	9	41	17	89	25	3	6	34	16
\$1,001 to \$2,000	87	19	63	27	74	20	5	9	55	26
\$2,001 to \$3,000	91	20	19	8	12	3	1	2	22	10
\$3,001 to \$4,000	83	18	11	5	2	1	0	0	8	4
\$4,001 to \$5,000	48	10	3	1	0	0	0	0	1	<1
\$5,001 and over	17	4	1	<1	0	0	0	0	1	<1
Total	464		237		363		53		214	

Note: Percentages may not sum to 100 due to rounding.

Source: GAO analysis of Customs data.

As shown in the shaded areas in the above table, 148 (32 percent) of the Customs officers receiving night differential pay during fiscal year 1999 at JFK would have had reductions of over \$3,000 in night differential pay. In addition, JFK had more officers with higher pay reductions than the other ports because many of its officers worked the 1 p.m.-to-9 p.m. shift. Of the 464 Customs officers who received night differential pay at JFK during fiscal year 1999, 452 (97 percent) worked the 1 p.m.-to-9 p.m. shift sometime during the year. Had H.R. 1833 been in effect, these officers would not have received night differential pay for 5 of the hours they worked that shift.

In contrast, the proposed changes would not have had as much of an impact on Customs officers working at the Baltimore-Washington International Airport and Seaport, a smaller port with fewer officers earning night differential pay. The officers from the Baltimore-Washington International Airport and Seaport who worked night shifts at the airport (there are no night shifts at the seaport) would have had smaller night differential pay reductions than those at JFK. In addition to having fewer officers, the primary reason that 44 (83 percent) of them would have had pay decreases of \$500 or less is that most officers only worked a limited number of night shifts at the airport on a periodic, rotating basis. Generally the officers work at the airport for a 1-week period, every 24 weeks.

Potential Total Night Differential Pay Reductions Under Proposed Changes

As part of our analysis, we also determined the total amount of pay reductions that would have occurred had section 123 (a) and section 123 (b) been in effect during fiscal year 1999 nationally for six frequently worked night shifts and at the five selected ports we analyzed in detail. Nationally, according to COSS, 6,510 Customs officers received about \$13.5 million in night differential pay in fiscal year 1999. About \$11 million (82 percent) of the \$13.5 million was concentrated on six frequently worked night shifts, such as the 4 p.m.-to-12 midnight shift. As shown in table 7, had sections 123 (a) and (b) been in effect, Customs officers would have received about \$6 million for working those six shifts, about \$5 million less than they received in fiscal year 1999.

Table 7: Night Differential Pay Under Current Law and Proposed Law for the Six Top “Differential Earning” Shifts Nationwide During Fiscal Year 1999

Total night differential pay amounts			
Shift hours	Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)
Midnight to 8 a.m. ^a	\$1,956,775	\$1,706,846	\$249,929
Noon to 8 p.m.	1,310,974	276,381	1,034,593
1 p.m. to 9 p.m.	2,059,029	643,686	1,415,343
2 p.m. to 10 p.m.	972,762	410,872	561,890
3 p.m. to 11 p.m.	654,615	346,833	307,782
4 p.m. to 12 a.m.	4,087,828	2,584,188	1,503,640
Total	\$11,041,983	\$5,968,806	\$5,073,177

^aThis shift is preserved in H.R.1833, so that officers working it would continue to earn 8 hours of night differential pay. Therefore, any reduction would be attributable to section 123 (a), which eliminates payment of night differential while officers are on leave.

Source: GAO analysis of COSS database.

At the five ports we analyzed, 1,331 officers would have received \$1,693,061 less night differential pay in fiscal year 1999 had the sections 123 (a) and (b) been in effect. These officers represent 20 percent of the total officers who received night differential pay in fiscal year 1999. Section 123 (b) would have resulted in the larger amounts of pay reductions for Customs officers, as shown in table 8.

Table 8: Decreased Pay That Would Have Occurred Had Proposed Changes Been in Effect at Five Selected Ports During Fiscal Year 1999

Port	Total night differential paid ^a	Decreased night differential pay under proposed changes		
		Amount of decrease under 123 (a)	Amount of decrease under 123 (b)	Amount of decrease under both 123 (a) and (b)
JFK	\$1,742,224	\$305,588	\$845,791	\$1,002,264
LAX	489,816	83,406	186,936	237,720
Miami	553,856	95,182	170,783	233,080
Baltimore-Washington	32,412	4,643	15,489	17,924
San Ysidro border	495,121	88,037	145,098	202,073
Total	\$3,313,429	\$576,856	\$1,364,097	\$1,693,061

Note: The effects of section 123 (a) and section 123 (b) are interrelated, therefore, the amounts in the last column are not the sum of the amounts of sections 123 (a) and (b). This interrelationship is explained in appendix I.

^aIn our detailed analyses for each of the five ports, some records were excluded because of apparent inconsistencies in the data which are further discussed in appendix I. Accordingly, the amounts of night differential pay for each port in the above table are slightly less than the amounts shown in appendix I, table 9.

Source: GAO analysis of Customs data.

The above amounts of decreased pay or “savings” that would have occurred as a result of implementation of H.R. 1833 sections 123 (a) and (b) would remain with Customs for additional enforcement purposes. Section 124 of H.R. 1833 would require the Secretary of the Treasury to calculate the savings from section 123, as we did in the above table. Customs, in turn, would be required to use the savings for additional enforcement overtime activities at the ports where the savings occurred. More detailed tables showing the effects of proposed changes at each of the five ports are shown in appendices II-VI.

Some Officers Would Receive Additional Night Differential Pay Under the Proposed Changes

While table 5 shows that many Customs officers working at the five selected ports would receive less night differential pay, some officers working early morning shifts (e.g., 4 a.m. to 12 noon and 5 a.m. to 1 p.m.) would receive increased night differential pay. Officers working early morning shifts starting as early as 4 a.m. do not receive any night differential pay under current law. However, under section 123 (b), officers working these early morning shifts would receive night differential pay for hours worked between 4 a.m. and 6 a.m. Had both sections 123 (a) and (b) been in effect during fiscal year 1999, 122 officers at four of the five ports would have received net increases in night differential pay totaling \$16,943. For example, at the San Ysidro land border crossing, 50

officers would have received net increases totaling \$10,818, while 10 officers at LAX would have received net increases totaling \$221.

Varied Views on Proposed Changes to Customs Officers' Pay

The Commissioner of Customs position¹⁰ and the NTEU national president's written comments to us,¹¹ along with our limited interviewing at Customs and NTEU headquarters, five Customs Management Centers (CMCs), five ports of entry, and five NTEU chapters, revealed a variety of opinions on the three proposed changes to Customs officers' pay. Both the Commissioner of Customs and the NTEU national president opposed sections 123 (a) and (b). Section 123 (a) would prohibit Customs from paying night differential pay when an officer is on leave. Section 123 (b) would shorten the number of hours for which night differential pay could be earned. The Commissioner of Customs stated that while Customs is aware of concerns raised about increases in overtime and premium pay costs, there are numerous contributory factors (other than night differential pay) that could increase such costs. These other factors include

"... increases in Federal pay rates, the doubling in commercial workloads without commensurate increases in staff, and increases in locations and hours of service requested by the trade community and Congress."

The NTEU national president opposed section 123 (a) because, among other reasons,

"... pay systems for other federal law enforcement officers include sometimes 25% higher pay for officers on an annual basis, including while they are on leave or during weeks that they do not work irregular hours. Unlike many of these law enforcement officers, Customs inspectors [officers] do not receive the added incentive of a twenty-year retirement."

NTEU's comments on the H.R. 1833 premium pay provisions are reproduced in appendix IX.

Similarly, several Customs and NTEU field representatives we interviewed said that they opposed section 123 (a). For example, an acting Customs airport director said that if officers regularly work the night shift, they

¹⁰Written in a May 25, 1999, letter to the Ranking Member, House Ways and Means Committee, concerning provisions in H.R. 1833.

¹¹In a June 26, 2000, letter commenting on the provisions in H.R. 1833 (see app. IX).

should get paid at that rate when they take leave, and one supervisor said that officers should not have to worry about losing money if they take their families on a 1-week vacation. On the other hand, other Customs and NTEU field representatives we interviewed said that they supported section 123 (a) because it is not appropriate to pay officers night differential pay when they are on leave.

The Commissioner of Customs also opposed section 123 (b), for the same reason as stated above. The NTEU national president opposed section 123 (b) as well, because of her belief that this provision would negatively impact paychecks and morale among Customs officers nationwide. In her letter to us, she commented that at present, night shifts are popular and sought after by senior officers because the entire shift is paid at a premium rate. She stated that most of these senior officers would not bid for those shifts if the premium were drastically reduced. Rather, they would bid for the day shift, and the less senior, new recruits would be “forced” to work the night shifts.

Similarly, at the field level, all but one of the Customs officers, all five NTEU chapter presidents, several supervisors, and one acting port director we interviewed also opposed section 123 (b). Many of them shared the NTEU national president’s reasons for opposing section 123 (b). However, other Customs field managers and supervisors we interviewed supported this provision. One CMC director said that the current law is not fair because hours worked before 6:00 p.m. are not inconvenient to Customs officers and therefore they should not receive night differential pay. In addition, one port director commented that officers who earn premium pay would not be severely impacted by this provision. He said that they could work more overtime to make up the difference in pay lost due to changes in the premium pay policy.

Regardless of whether they expressed support or opposition, many of the Customs and NTEU officials and officers we interviewed commented that section 123 (b), in particular, would have a significantly adverse effect on morale and would cause problems in staffing their ports’ night shifts because it would greatly decrease officers’ night differential pay. Some of these believed there would be fewer volunteers for the shifts, and managers would then have to “force” officers to work them.

Concerning section 121, which would eliminate premium pay, including night differential pay, from the \$30,000 fiscal year overtime and premium pay cap, NTEU’s national president offered qualified support for the provision “on its own,” not as a trade-off for enacting the other two night

differential pay provisions. NTEU also commented that, currently, only a small percentage of officers reach the \$30,000 annual pay cap, and only those would benefit from this provision. The Commissioner of Customs' May 25, 1999, letter to the Ranking Member of the House Committee on Ways and Means did not address section 121, and Customs headquarters' officials were reluctant to provide us with their views on this and other sections of H.R. 1833.

In commenting on this report, Customs said that OMB is the appropriate agency to issue statements of the administration's position on legislative matters. In this regard, OMB issued a Statement of Administration Policy on May 25, 1999, on H.R. 1833 that, among other things, opposed certain provisions of H.R. 1833 that would amend the annual cap on overtime for Customs officers, (i.e., section 121). It stated that

"These provisions should be considered in the context of achieving overall consistency in pay, including overtime and its treatment for retirement purposes, between the Customs Service and similarly situated Federal inspection agencies."

At the field level, the Customs and NTEU representatives we interviewed had a variety of views on section 121. They generally supported this provision because it would allow officers to earn more overtime by not counting premium pay against the fiscal year cap and would allow managers to more easily track and monitor officers' overtime earnings exclusively, as they approach the cap. Conversely, a reason given by two inspectors and one NTEU chapter president for opposing this provision was that it would primarily benefit supervisors, the only ones that they believed come close to earning the \$30,000 annually in overtime and premium pay.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from the Secretary of the Treasury and the Commissioner of Customs. We also requested comments from NTEU on a section of the draft report pertaining to information NTEU officials provided to us.

On January 9, 2001, Customs provided written comments on the draft report (see app. VIII). Customs said that any concerns that it may have had regarding the audit were addressed through discussions with the audit team. Customs also said that its reluctance to officially comment on provisions in H.R. 1833, as noted in our report, is consistent with administration policy, which holds that OMB is the appropriate executive

branch entity to issue statements of the administration's position on legislative matters.

While Customs identified OMB as the appropriate agency for providing comments on legislative matters, Customs has commented on H.R. 1833, but not directly to us. Instead, as noted in our report, Customs headquarters' officials gave us a copy of a letter dated May 25, 1999, from the Commissioner to the Ranking Member of the House Committee on Ways and Means that addresses Customs positions on H.R. 1833. In that letter, as we stated earlier in the report, the Commissioner said that Customs is opposed to section 123, but did not address section 121. On May 25, 1999, OMB issued a Statement of Administration Policy that stated, in effect, that the administration opposed section 121 because it believed this section should be considered in the context of achieving overall consistency in pay between Customs and other similarly situated inspection service agencies.

On January 16, 2001, the Department of the Treasury provided written comments on our draft report (see app. VII). The Department said it was in agreement with the comments submitted to us by the U.S. Customs Service.

On January 10, 2001, NTEU's Director of Legislation informed us that NTEU had no comments on the draft report section dealing with views on the proposed legislative changes that we asked NTEU to review.

As agreed with your office, unless you publicly announce its contents earlier, we plan no additional distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the Co-Chairman of the Senate Caucus on International Narcotics Control; the Chairman and Ranking Member of the Senate Committee on Finance; the Chairman and Ranking Minority Member of the House Committee on Ways and Means; the Chairman and the Ranking Minority Member, House Ways and Means Subcommittee on Trade; the Secretary of the Treasury; and the Commissioner of Customs. We will make copies available to others upon request.

The key contributors to this report are acknowledged in appendix X. If you or your staff have any questions, please contact Darryl Dutton on (213) 830-1000 or me on (202) 512-8777.

Sincerely yours,

A handwritten signature in black ink, reading "Laurie E. Ekstrand". The signature is written in a cursive, flowing style.

Laurie E. Ekstrand
Director, Justice Issues

Appendix I: Objectives, Scope, and Methodology

We were requested to review selected aspects of the U.S. Customs Service officers' premium pay and determine how night differential pay, in particular, would be affected by proposed legislation introduced in the 106th Congress. Specifically, we had three objectives: (1) compare current law to proposed legislative changes in H.R. 1833 dealing with Customs officers' pay, (2) determine the extent to which Customs officers' pay would increase or decrease if proposed changes were enacted, and (3) obtain Customs and the National Treasury Employees Union's (NTEU) views on the proposed changes. Our review focused primarily on analyzing the effects of sections 123 (a) and (b) of subtitle C of H.R. 1833 dealing with night differential pay. In addition to our analysis, we obtained views on sections 123 (a) and (b) and section 121, a related section dealing with Customs officers' annual overtime and premium pay cap. We also compared these sections in H.R. 1833 to current law.

Our review included the following sections of subtitle C of H.R. 1833:

- section 123 (a), which would prohibit Customs from paying night differential pay to officers when they take annual, sick, or other leave and do not actually work those premium pay hours;
- section 123 (b), which would reduce the number of available hours in a day for which night differential pay could be earned; and
- section 121, which would remove premium pay, including night differential pay, from the calculation of the \$30,000 fiscal year overtime and premium pay cap.

To address our first objective, we reviewed current law, Customs regulations, and relevant arbitration decisions pertaining to Customs officers' premium pay. We also reviewed proposed changes to Customs officers' premium pay in subtitle C of H.R. 1833, the legislative history of the proposed changes, and Congressional Research Service reports on H.R. 1833. We then compared the current law to the proposed changes in H.R. 1833 to identify the differences and evaluate how the changes would potentially affect Customs officers' night differential pay.

To address our second objective, we analyzed the fiscal year 1999 Customs Overtime and Scheduling System (COSS) database, which contains detailed information on officers' premium pay, including night differential pay. As discussed below, we analyzed information on officers' night differential pay earnings for fiscal year 1999, focusing our analysis to a limited extent on national data and then more specifically on five judgmentally selected Customs ports of entry. We calculated actual night differential earnings for fiscal year 1999 and then what the officers' night

differential earnings would have been if sections 123 (a) and (b) of H.R. 1833 had been in effect during the year.

To address our third objective, we obtained comments from the Commissioner of Customs and the national president of the National Treasury Employees Union (NTEU) and interviewed Customs managers, supervisors, and officers, and NTEU chapter presidents at five selected ports. More specific information on how we obtained views on pay provisions in H.R. 1833 is discussed below.

Analysis of Proposed Changes on Customs Officers' Night Differential Pay

To determine the extent to which Customs officers' pay would increase or decrease if provisions in H.R. 1833 affecting night differential pay were enacted, we analyzed all COSS data on regular shifts worked in fiscal year 1999 nationally and then at five selected ports. COSS was designed to record information about each Customs officer's daily work, including the date the work was performed, the start and stop time, and the type of pay that was earned (regular, night differential, annual leave, etc.), which is indicated by a transaction code. With this information, we were able to determine the amount of night differential pay officers earned in fiscal year 1999, the amount they would have made if each of the relevant provisions of H.R. 1833 were in effect, and the resulting increase or decrease.

While COSS includes pay information on Customs officers and other employees, we limited the analysis to officers—Customs inspectors and canine enforcement officers—because the proposed legislative changes only applied to them. There are 332 unique port codes in the COSS data system, though some of them are office sites (such as headquarters) and subports (such as courier facilities), which are not actual ports. According to COSS, 106 ports paid out no night differential pay in fiscal year 1999, and an additional 5 ports paid out less than \$1,000 total for the fiscal year. Only 112 ports paid out over \$10,000 in total night differential pay. The amounts of differential paid at each port ranged from zero to \$1,758,696, with an average of \$59,782 and a median of \$9,565. In total, according to COSS, 6,510 Customs officers received about \$13.5 million in night differential pay in fiscal year 1999. Table 9 shows the top 100 ports and the amount of night differential pay officers at these ports received in fiscal year 1999.

Table 9: Amount of Night Differential Paid at Top 100 Ports Nationwide for Fiscal Year 1999

Rank	Port name	Total amount of night differential pay
1	JFK, NY	\$1,758,696.26
2	El Paso, TX	668,615.99
3	Laredo, TX	607,634.21
4	Miami Intl Airport, FL	556,449.28
5	LAX, CA	501,388.46
6	San Ysidro, CA	498,404.40
7	Buffalo-Niagara Falls, NY	495,105.89
8	Detroit, MI	485,413.77
9	Newark, NJ	414,345.83
10	Chicago, IL	408,715.54
11	Brownsville, TX	388,344.94
12	Calexico, CA	381,418.88
13	Hidalgo, TX	271,078.47
14	Nogales, AZ	252,504.71
15	Dallas/Ft. Worth, TX	207,070.40
16	Port Huron, MI	198,648.55
17	Champlain-Rouses Point, NY	190,462.49
18	Logan Airport, MA	190,356.06
19	Atlanta, GA	169,368.91
20	Eagle Pass, TX	162,403.37
21	Blaine, WA	158,564.54
22	San Luis, AZ	154,365.34
23	San Francisco, CA	140,398.72
24	San Diego, CA	127,562.84
25	Del Rio, TX	126,537.35
26	Philadelphia, PA	125,827.40
27	Houston Intercontl, TX	123,670.30
28	Intl Airport, PR	106,923.42
29	Highgate Springs/Alburg, VT	106,331.35
30	Washington, DC	104,237.16
31	Douglas, AZ	103,922.56
32	San Juan, PR	96,528.62
33	Orlando, FL	95,204.47
34	Roma, TX	88,101.13
35	Long Beach, CA	84,368.12
36	Derby Line, VT	82,640.66
37	Honolulu Intl Airport, HI	81,591.81
38	Presidio, TX	78,895.20
39	Port Everglades, FL	77,608.81
40	Memphis, TN	77,423.64
41	Pembina, ND	77,195.75

Appendix I: Objectives, Scope, and Methodology

Rank	Port name	Total amount of night differential pay
42	Progreso, TX	74,399.25
43	Otay Mesa, CA	68,353.32
44	UPS Courier, KY	65,875.22
45	Alexandria Bay, NY	60,808.76
46	Cincinnati, OH	59,108.45
47	Sault Ste. Marie, MI	58,838.08
48	Houston, TX	55,716.36
49	Emery Courier, OH	55,228.50
50	Houlton, ME	54,704.12
51	Sumas, WA	54,368.39
52	Federal Express Courier, TN	53,732.50
53	Columbus, NM	52,941.35
54	Federal Express Eccf, NJ	50,991.89
55	Trout River, NY	50,901.53
56	Richford, VT	47,715.62
57	Fabens, TX	45,376.84
58	Toronto, Canada	43,905.63
59	Naco, AZ	43,290.93
60	International Falls, MN	42,096.40
61	Calais, ME	41,605.21
62	Massena, NY	36,077.46
63	Vancouver B.C. Preclear	35,454.94
64	Andrade, CA	35,386.73
65	Nassau, Bahama Islands	33,716.44
66	Rio Grande City, TX	32,932.33
67	Baltimore, MD	32,577.74
68	Tecate, CA	32,345.50
69	Sweetgrass, MT	32,214.23
70	UPS, NJ	30,499.87
71	Oroville, WA	30,104.97
72	Minneapolis-St. Paul, MN	29,775.04
73	Montreal, Canada	29,372.55
74	Beecher Falls, VT	28,213.76
75	Jackman, ME	27,235.80
76	Roosville, MT	26,862.65
77	West Palm Beach, FL	26,207.09
78	Federal Express Hub, IN	25,163.82
79	Denver, CO	24,894.44
80	Norton, VT	24,178.17
81	Portal, ND	23,930.65
82	Santa Teresa, NM	23,294.88
83	Raymond, MT	22,955.42
84	San Antonio, TX	22,851.35
85	Ogdensburg, NY	22,225.24

Rank	Port name	Total amount of night differential pay
86	Warroad, MN	22,166.72
87	Eastport, ID	22,087.35
88	Freeport, Bahama Islands	21,642.04
89	Fort Kent, ME	20,507.86
90	Van Buren, ME	20,359.94
91	Dunseith, ND	19,418.86
92	Madawaska, ME	18,779.70
93	Fort Fairfield, ME	18,519.97
94	Baudette, MN	18,327.51
95	Airborne Hub, OH	17,734.90
96	Grand Portage, MN	17,675.46
97	Burlington Air Express, OH	17,368.51
98	Phoenix, AZ	15,849.96
99	Lukeville, AZ	15,746.86
100	Lynden, WA	15,511.25

Source: GAO analysis of COSS database.

We were also able to identify the shifts that account for the highest amounts of night differential pay nationally and how the amount of night differential pay for these shifts would be different if the proposed legislation had been in effect. The six shifts shown in table 10 below account for \$11,041,983 in night differential, 82 percent of the total \$13,510,798 paid to Customs officers nationally in fiscal year 1999.

Table 10: Total and Average per Officer Amount of Night Differential Pay Under Current Law and Under H.R. 1833 Sections 123 (a) and (b) for the Six Top “Differential Earning” Shifts Nationwide During Fiscal Year 1999

Shift hours	Total			Average per shift, per officer		
	Current law (actual)	Proposed (estimate)	Difference (decrease)	Current law (actual)	Proposed (estimate)	Difference (decrease)
4 p.m. to 12 a.m.	\$4,087,828.20	\$2,584,187.84	\$1,503,640.36	\$22.25	\$16.56	\$5.69
1 p.m. to 9 p.m.	2,059,028.66	643,685.56	1,415,343.10	23.87	8.89	14.98
12 a.m. to 8 a.m. ^a	1,956,775.40	1,706,846.00	249,929.40	29.80	29.69	0.11
12 p.m. to 8 p.m.	1,310,973.52	276,381.35	1,034,592.17	23.18	5.76	17.42
2 p.m. to 10 p.m.	972,762.30	410,871.70	561,890.60	22.66	11.27	11.39
3 p.m. to 11 p.m.	654,615.14	346,832.62	307,782.52	22.69	14.07	8.62

^aThis shift, 12 a.m. (midnight) until 8 a.m., is preserved in H.R. 1833 so that officers working this shift would continue to earn 8 hours of night differential. Therefore, any reduction because of the proposed legislation is attributable to section 123 (a) eliminating payment of night differential while officers are on leave.

Source: GAO analysis of COSS database.

To understand the effect of the proposed changes on Customs officers, we chose five ports as case studies for the specific analyses based on the number of air and land passengers processed: JFK, LAX, and Miami International Airport because they are three of the largest airports in the country; Baltimore-Washington International Airport and Seaport because it represents a medium-sized port; and San Ysidro because it is the largest land border crossing.

We were able to extract information about how Customs officers were paid using transaction codes provided in COSS that indicate what kind of pay was given for that shift. If an officer worked a shift and was paid night differential for it, the transaction code would be different from another shift where, for example, the officer was on annual leave and received night differential pay.

Using these transaction codes, we calculated the amount of night differential pay received for every shift that received it. Then, we estimated the amount of night differential pay that would have been received for these same shifts had sections 123 (a) or (b) of H.R. 1833 (or both) been in effect in fiscal year 1999, and we calculated the difference between them. These differences were totaled for all the officers at each port and aggregated by officer to determine how much each officer would have gained or lost over the entire fiscal year.

Further, since night differential pay is given for certain shifts and the proposed legislation changes the rules for which shifts qualify to receive night differential pay, we also aggregated the existing night differential pay amounts and proposed night differential amounts by shift, to understand which shifts would be most affected by the proposed changes. A full discussion of the results of these analyses at each of the five ports can be found in appendixes II-VI.

We determined how much increased or decreased night differential pay Customs officers would have received if section 123 (a) alone was in effect, if section 123 (b) alone was in effect, and if both sections were in effect. It is important to note, here, that the effect of these sections together is not just the sum of the effect of each section. For example, under current law, if an officer worked a regularly scheduled shift from 1 p.m. to 9 p.m., the officer would receive 8 hours of night differential pay for days on leave. If section 123 (a) alone was in effect, the officer would receive no night differential pay when taking leave, thus losing 8 hours of night differential pay on each leave day. However, if section 123 (b) alone was in effect, the officer on a leave day would receive 3 hours of night

differential pay for the hours between 6 p.m. and 9 p.m., losing 5 hours of night differential pay. In summary, under section 123 (a) alone, the officer would lose 8 hours of night differential pay on leave days. Under section 123 (b) alone the officer would lose 5 hours of night differential pay on leave days. However, if both sections (a) and (b) were in effect, the officer would only lose 8 hours of night differential pay while on leave, not 13 hours. Section 123 (b) would not have an effect on leave days if section 123 (a) was in effect. Therefore, the sum of the effects of each section alone may be larger than the effect of both sections being in effect.

To assess the general reliability of COSS, we reviewed the data for shifts that officers worked and the amount of night differential pay they earned. With few exceptions, the start and stop times and the amount of night differential pay earned were consistent with existing requirements.¹² We also obtained information from Customs about COSS internal controls and data reliability. On the basis of responses to a list of our questions about data reliability, Customs seems to have a number of steps and quality control procedures in place to ensure the reliability of COSS data.

Finally, while patterns of hours worked in future years may change, and our five selected ports are not representative of all ports, our analysis is an indicator of the changes that could occur in pay if provisions such as 123 (a) and (b) were enacted. However, if scheduling patterns at the ports changed or if the proposed legislation would change the way ports scheduled shifts, the effects could be very different from the data presented here.

¹²In the detailed port analyses, we excluded some records because there appeared to be inconsistencies in the records. For example, COSS data for JFK showed several shifts that appeared qualified to receive night differential pay, but according to the transaction code, were not paid the differential. Customs officials familiar with COSS explained that these employees may have been part time, and part-time officers do not receive night differential pay. Further, some of the excluded records were shifts that received night differential pay, but were not within the hours subject to night differential pay. For example, there were 11 such records excluded from our analysis of Miami International Airport. These excluded records accounted for less than 1 percent of the total records, and we excluded them to avoid overestimating or underestimating the losses by officers.

Determining Customs and NTEU's Views on Proposed Changes in Officers' Pay

Customs headquarters' officials were reluctant to provide written comments on the premium pay provisions in H.R. 1833, including those pertaining to night differential pay, apparently in view of the sensitivity of the subject. In lieu of written comments, they directed us to a May 25, 1999, letter from the Commissioner to the Ranking Member of the House Ways and Means Committee, which addressed Customs position on section 123 of H.R. 1833, but did not address section 121. We asked for and obtained written comments from the national president of NTEU about the proposed pay provisions in H.R. 1833. In addition, we interviewed officials from the Department of the Treasury, Office of Enforcement; Customs headquarters' officials; and NTEU headquarters' officials.

At the field level, we interviewed 54 Customs and NTEU representatives that included 5 Customs Management Center (CMC) officials, 5 port directors, and 5 NTEU chapter presidents to obtain their views on the proposed pay provisions. At the five ports, we also interviewed 17 supervisory officers who were selected by their port's management and 22 officers who were selected by their NTEU chapter presidents. The results from our limited interviewing at the five selected ports reflect only the views of the Customs and NTEU officials and selected supervisors and officers we interviewed at the CMCs and ports we visited. Therefore, these field results cannot be generalized to Customs nationwide.

We conducted our work from March 2000 through November 2000 in accordance with generally accepted government auditing standards. Customs provided comments on a draft of this report, which are summarized at the end of the letter and reproduced in appendix VIII.

Appendix II: Effects of Proposed Changes on Officers' Night Differential Pay at JFK

Of the five ports we used for analysis, Customs officers at JFK would have been the most affected by the changes in the proposed legislation. According to COSS, 679 Customs officers were on the payroll at JFK sometime during fiscal year 1999. Of these, 464 officers (68 percent) received a total of \$1,742,224 in night differential pay. Table 11 shows that 181 of the 464 officers (39 percent) earned a total of over \$5,000 in night differential pay during the fiscal year.

Table 11: Night Differential Pay at JFK During Fiscal Year 1999		
Amount received	Number of officers	Percent of officers
\$1 to \$500	76	16
\$501 to \$1,000	23	5
\$1,001 to \$2,000	58	13
\$2,001 to \$3,000	28	6
\$3,001 to \$4,000	38	8
\$4,001 to \$5,000	60	13
Over \$5,000	181	39
Total	464	100

Source: GAO analysis of the COSS database.

Section 123 (a) of the proposed legislation would prohibit Customs from paying premium pay, including night differential pay to officers when they take annual, sick, or other leave and do not actually work those premium pay hours. If that section had been in effect in fiscal year 1999, 428 of the 464 officers that received night differential pay in fiscal year 1999 would have made less night differential (see table 12), with most of the officers' pay reduced by over \$500. If section 123 (a) only were in effect in fiscal year 1999, JFK Customs officers would have received \$1,436,636 in night differential pay, \$305,588 less than they received in fiscal year 1999.

Table 12: Decreased Night Differential Pay If Section 123 (a) Only Had Been in Effect at JFK During Fiscal Year 1999		
Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	167	39
\$501 to \$1,000	143	33
\$1,001 to \$2,000	110	26
\$2,001 to \$3,000	7	2
\$3,001 to \$4,000	1	<1
Total	428	100 ^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Section 123 (b) would reduce the number of available hours in a day for which night differential pay could be earned in two ways: reducing the time period in which officers were eligible to earn night differential pay and eliminating the majority of hours provision. If section 123 (b) only had been in effect in fiscal year 1999, all 464 officers that earned night differential at JFK would have received less night differential pay overall (see table 13). While 35 percent of these officers would have had a \$1,000 or less overall reduction in night differential pay, most officers' pay would have been reduced by over \$1,000. If only section 123 (b) had been in effect, these officers would have earned an estimated total of \$896,433 in night differential pay, \$845,791 less than they received in fiscal year 1999.

Table 13: Decreased Night Differential Pay If Section 123 (b) Only Had Been in Effect at JFK During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	110	24
\$501 to \$1,000	50	11
\$1,001 to \$2,000	103	22
\$2,001 to \$3,000	103	22
\$3,001 to \$4,000	65	14
\$4,001 to \$5,000	31	7
Over \$5,000	2	<1
Total	464	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Had both sections 123 (a) and 123 (b) been in effect in fiscal year 1999, all 464 officers would have received less night differential pay. Of those 464 officers, 326 (70 percent), as shown in the shaded areas in table 14 below, would have received decreased night differential pay of more than \$1,000 over the entire fiscal year. Overall, the officers would have earned a total of \$739,960 in night differential pay, a reduction of \$1,002,264 from the actual total amount received in fiscal year 1999. Most of the reduction would have come from the top four "night"¹³ shifts regularly scheduled at JFK.

¹³The term "night" shifts as used in this report refers to any shifts qualifying for night differential pay.

Table 14: Decreased Night Differential Pay and Amounts of Decreased Pay If Both Sections 123 (a) and (b) Had Been in Effect at JFK During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	97	21
\$501 to \$1,000	41	9
\$1,001 to \$2,000	87	19
\$2,001 to \$3,000	91	20
\$3,001 to \$4,000	83	18
\$4,001 to \$5,000	48	10
Over \$5,000	17	4
Total	464	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Table 15 shows how much of the decreased pay is accounted for by each of the shifts and, on average, the decrease in night differential pay per shift. The reduction of night differential pay for the 1 p.m.-to-9 p.m. shift accounts for 76 percent of the total reduction in night differential at JFK.

Table 15: Decreased Night Differential Pay Resulting From Proposed Law for Top Four Night Shifts at JFK During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)	Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)
1 p.m.-9 p.m.	452	\$1,102,641.89	\$339,382.37	\$763,259.52	\$24.11	\$7.42	\$16.69
3 p.m.-11 p.m.	20	40,532.35	21,331.05	19,201.30	21.39	11.26	10.13
4 p.m.-12 a.m.	342	497,700.91	311,971.81	185,729.10	24.06	15.08	8.98
10 p.m.-6 a.m.	88	49,726.52	39,054.22	10,672.30	17.66	13.87	3.79

Note: The fifth most common night shift at JFK is the 12 a.m.-to-8 a.m. shift. The night differential earned for this shift is preserved in the legislation, however, so there is no change in night differential earned for this shift except when officers are on leave.

Source: GAO analysis of the COSS database.

Appendix III: Effects of Proposed Changes on Officers' Night Differential Pay at LAX

According to COSS, 423 Customs officers were on the payroll at LAX sometime during fiscal year 1999. Of these, 238 officers (56 percent) earned \$489,816 in night differential pay. As shown in the shaded areas in table 16 below, 95 (40 percent) of the 238 officers earned \$1,000 or less in night differential pay over the fiscal year, and 11 percent earned over \$5,000.

Table 16: Night Differential Pay at LAX During Fiscal Year 1999

Amount received	Number of officers	Percent of officers
\$1 to \$500	74	31
\$501 to \$1,000	21	9
\$1,001 to \$2,000	43	18
\$2,001 to \$3,000	38	16
\$3,001 to \$4,000	18	8
\$4,001 to \$5,000	17	7
Over \$5,000	27	11
Total	238	100

Source: GAO analysis of the COSS database.

Section 123 (a) of the proposed legislation would prohibit Customs from paying premium pay, including night differential pay, to officers when they take annual, sick, or other leave and do not actually work those premium pay hours. If that section had been in effect in fiscal year 1999, 198 of the 238 officers that received night differential pay in fiscal year 1999 would have made less night differential pay (see table 17). Two-thirds (67 percent) of these officers would have received up to \$500 less. If section 123 (a) only were in effect in fiscal year 1999, LAX Customs officers would have received \$406,410 in night differential pay, \$83,406 less than they received in fiscal year 1999.

Table 17: Decreased Night Differential Pay If Section 123 (a) Only Had Been in Effect at LAX During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	132	67
\$501 to \$1,000	46	23
\$1,001 to \$2,000	20	10
Total	198	100

Source: GAO analysis of the COSS database.

Section 123 (b) would reduce the number of available hours in a day for which night differential pay could be earned in two ways: reducing the time period in which officers are eligible to earn night differential pay and eliminating the majority of hours provision. If section 123 (b) only had been in effect in fiscal year 1999, 237 of the 238 officers that earned night differential pay at LAX would have received less night differential pay. In addition, 10 officers would have ended the fiscal year with small net gains in night differential pay. Of these 237 officers, 162 (69 percent), as shown in the shaded areas in table 18, would have had a \$1,000 or less overall reduction in night differential pay. If only section 123 (b) was in effect, the officers would have made \$302,880 in night differential pay, \$186,936 less than they received in fiscal year 1999.

Table 18: Decreased Night Differential Pay if Section 123 (b) Only Had Been in Effect at LAX During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	113	48
\$501 to \$1,000	49	21
\$1,001 to \$2,000	56	24
\$2,001 to \$3,000	12	5
\$3,001 to \$4,000	5	2
\$4,001 to \$5,000	1	<1
Over \$5,000	1	<1
Total	237	100

Source: GAO analysis of the COSS database.

Had both sections 123 (a) and 123 (b) been in effect in fiscal year 1999, 237 of the 238 officers would have received less night differential pay. Of those 237 officers, 97 (41 percent), as shown in the shaded areas in table 19, would have received decreased night differential pay of more than \$1,000 over the entire fiscal year. Ten officers would have had a total net gain of \$221 in night differential pay for the entire fiscal year. Overall, the officers would have earned a total of \$252,097 in night differential pay, a reduction of \$237,720 from the amounts they received in fiscal year 1999. Most of the reductions would have come from five night¹⁴ shifts regularly scheduled at LAX. Table 20 shows how much of the difference is accounted for by each of the shifts and, on average, the decrease in night differential pay per

¹⁴The term night shifts as used in this report refers to any shifts qualifying for night differential pay.

shift. Likewise, table 21 shows which shifts account for a gain in night differential pay.

Table 19: Decreased Night Differential Pay If Both Sections 123 (a) and (b) Had Been in Effect at LAX During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	99	42
\$501 to \$1,000	41	17
\$1,001 to \$2,000	63	27
\$2,001 to \$3,000	19	8
\$3,001 to \$4,000	11	5
\$4,001 to \$5,000	3	1
Over \$5,000	1	<1
Total	237	100

Source: GAO analysis of the COSS database.

Table 20: Decreased Night Differential Pay Resulting From Proposed Law for Top Five Night Shifts at LAX During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)	Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)
Noon-8 p.m.	105	\$48,616.70	\$10,263.12	\$38,353.58	\$23.88	\$5.04	\$18.84
Noon-10 p.m.	26	47,271.24	15,636.92	31,634.32	27.81	9.20	18.61
1 p.m.-9 p.m.	137	37,340.68	12,284.68	25,056.00	24.50	8.06	16.44
3 p.m.-11 p.m.	89	89,351.23	46,091.52	43,259.71	23.20	11.97	11.23
4 p.m.-12 a.m.	159	190,162.30	118,679.29	71,483.01	23.72	14.81	8.91

Source: GAO analysis of the COSS database.

Table 21: Increased Night Differential Pay Resulting From Proposed Law for Early Morning Shifts at LAX During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (increase)	Current law (actual)	H.R. 1833 (estimate)	Difference (increase)
5 a.m.-1 p.m.	42	0	\$999.58	\$999.58	0	\$3.98	\$3.98
5:30 a.m.-1:30 p.m.	9	0	173.24	173.24	0	1.90	1.90

Note: These gains in night differential pay are aggregated by shift. While at least 42 officers worked these shifts at some time in fiscal year 1999, only 10 officers would have ended the fiscal year with a net gain in night differential pay.

Source: GAO analysis of the COSS database.

Appendix IV: Effects of Proposed Changes on Officers' Night Differential Pay at Miami International Airport

According to COSS, 537 Customs officers were on the payroll at Miami International Airport during fiscal year 1999. Of these, 391 officers (73 percent) earned a total of \$553,856 in night differential pay. As shown in the shaded areas in table 22 below, nearly half (181) of these officers earned \$1,000 or less in night differential pay over the fiscal year.

Table 22: Night Differential Pay at Miami International Airport During Fiscal Year 1999

Amount received	Number of officers	Percent of officers
\$1 to \$500	112	29
\$501 to \$1,000	69	18
\$1,001 to \$2,000	94	24
\$2,001 to \$3,000	73	19
\$3,001 to \$4,000	27	7
\$4,001 to \$5,000	10	3
Over \$5,000	6	2
Total	391	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Section 123 (a) of the proposed legislation would prohibit Customs from paying premium pay, including night differential pay, to officers when they take annual, sick, or other leave and do not actually work those premium pay hours. If that section had been in effect in fiscal year 1999, 348 of the 391 officers that received night differential pay in fiscal year 1999 would have earned less night differential pay (see table 23). Eighty-six percent of the officers would have received up to \$500 or less. If section 123 (a) only had been in effect in fiscal year 1999, Miami Customs officers would have received a total of \$458,675 in night differential pay, \$95,182 less than they received in fiscal year 1999.

Table 23: Decreased Night Differential Pay If Section 123 (a) Only Had Been in Effect at Miami International Airport During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	301	86
\$501 to \$1,000	39	11
\$1,001 to \$2,000	8	2
Total	348	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Section 123 (b) would reduce the number of available hours in a day for which night differential pay could be earned in two ways: reducing the time period in which officers are eligible to earn night differential pay and eliminating the majority of hours provision. If section 123 (b) only had been in effect in fiscal year 1999, 355 of the 391 officers that earned night differential pay at Miami International Airport in fiscal year 1999 would have received less night differential pay. Sixty-nine officers would have ended the fiscal year with a net gain in night differential pay. Of these 355 officers (84 percent), as shown in the shaded areas of table 24 below, would have had \$1,000 or less overall reduction in night differential pay. If only section 123 (b) had been in effect, Miami Customs officers would have received a total of \$383,072 in night differential pay, or \$170,784 less than they received in fiscal year 1999.

Table 24: Decreased Night Differential Pay If Section 123 (b) Only Had Been in Effect at Miami International Airport During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	225	63
\$501 to \$1,000	73	21
\$1,001 to \$2,000	48	14
\$2,001 to \$3,000	8	2
\$3,001 to \$4,000	1	<1
Total	355	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Had both sections 123 (a) and 123 (b) been in effect in fiscal year 1999, 363 of the 391 officers would have received less night differential pay. Of those 363 officers, 88 (24 percent), as shown in the shaded areas in table 25 below, would have received decreased night differential pay of more than \$1,000 over the entire fiscal year. Further, if both sections had been in effect, 61 officers would have gained a total of \$5,900 in night differential pay for the entire fiscal year. Overall, Miami Customs officers would have earned a total of \$320,776 in night differential pay, a reduction of \$233,080 from the amounts they received in fiscal year 1999. Most of the reductions would have come from the top four night¹⁵ shifts regularly scheduled at Miami International Airport. Table 26 shows how much of the difference is

¹⁵The term night shifts as used in this report refers to any shifts qualifying for night differential pay.

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accounted for by each of the shifts and, on average, the decrease in night differential pay per shift. Likewise, table 27 shows which shifts account for a gain in night differential pay.

Table 25: Decreased Night Differential Pay If Both Sections 123 (a) and (b) Had Been in Effect at Miami International Airport During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	186	51
\$501 to \$1,000	89	25
\$1,001 to \$2,000	74	20
\$2,001 to \$3,000	12	3
\$3,001 to \$4,000	2	<1
Total	363	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source:GAO analysis of the COSS database.

Table 26: Decreased Night Differential Pay Resulting From Proposed Law for Top Four Night Shifts at Miami International Airport During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)	Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)
12 p.m.-8 p.m.	83	\$30,138.32	\$6,386.15	\$23,752.17	\$23.47	\$4.97	\$18.50
1 p.m.-9 p.m.	126	116,471.53	35,752.45	80,719.08	22.65	6.95	15.70
2 p.m.-10 p.m.	84	51,143.17	20,982.74	30,160.43	24.85	10.20	14.65
4 p.m.-12 a.m.	253	210,987.93	133,874.83	77,113.10	20.63	13.09	7.54

Note: The fifth most common night shift is the 12 a.m.-to-8 a.m. shift. The night differential earned for this shift is preserved in the proposed legislation, however, so there is no change in night differential earned for this shift except when officers are on leave.

Source: GAO analysis of the COSS database.

Table 27: Increased Night Differential Pay Resulting From Proposed Law for the Early Morning Shift at Miami International Airport During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (increase)	Current law (actual)	H.R. 1833 (estimate)	Difference (increase)
4 a.m.-12 p.m.	125	0	\$16,359.80	\$16,359.80	0	\$7.44	\$7.44

Note: These gains in night differential pay are aggregated by shift. While 125 officers worked this shift sometime in fiscal year 1999, only 61 officers would have ended the fiscal year with a net gain in night differential pay if sections 123 (a) and (b) of H.R. 1833 had been in effect.

Source: GAO analysis of the COSS database.

Appendix V: Effects of Proposed Changes on Officers' Night Differential Pay at Baltimore-Washington International Airport and Seaport

According to COSS, 62 Customs officers were on the payroll at the Baltimore port sometime during fiscal year 1999. Of these, 53 officers (85 percent) earned \$32,412 in night differential pay. As shown in table 28 below, 41 (77 percent) of the 53 officers earned \$500 or less in night differential pay over the fiscal year, but none earned over \$5,000.

Table 28: Night Differential Pay at Baltimore-Washington International Airport and Seaport During Fiscal Year 1999

Amount received	Number of officers	Percent of officers
\$1 to \$500	41	77
\$501 to \$1,000	3	6
\$1,001 to \$2,000	3	6
\$2,001 to \$3,000	4	8
\$3,001 to \$4,000	1	2
\$4,001 to \$5,000	1	2
Total	53	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Section 123 (a) of the proposed legislation would prohibit Customs from paying premium pay, including night differential pay, to officers when they take annual, sick, or other leave and do not actually work those premium pay hours. If that section had been in effect in fiscal year 1999, 38 of the 53 officers that received night differential pay in fiscal year 1999 would have made less night differential pay (see table 29). Officers would have received a total of \$27,769 in night differential pay, \$4,643 less than the actual total amount received in fiscal year 1999.

Table 29: Decreased Night Differential Pay If Section 123 (a) Only Had Been in Effect at the Baltimore Port During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	36	95
\$501 to \$1,000	1	3
\$1,001 to \$2,000	1	3
Total	38	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Section 123 (b) would reduce the number of available hours in a day for which night differential pay could be earned in two ways: reducing the time period that is eligible for premium pay and eliminating the majority of

hours provision. If section 123 (b) only had been in effect in fiscal year 1999, all 53 officers that earned night differential pay in fiscal year 1999 would have received less night differential pay (see table 30). One additional officer would have gained night differential pay. Most of these officers (83 percent) would have a \$500 or less overall reduction in night differential pay. If only section 123 (b) were in effect, these officers would have made a total of \$16,923 in night differential pay, \$15,489 less than the actual total amount received in fiscal year 1999.

Table 30: Decreased Night Differential Pay If Section 123 (b) Only Had Been in Effect at the Baltimore Port During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	44	83
\$501 to \$1,000	3	6
\$1,001 to \$2,000	6	11
Total	53	100

Source: GAO analysis of the COSS database.

Had both sections 123 (a) and 123 (b) been in effect in fiscal year 1999, all 53 officers would have received less night differential pay, while one officer would have gained a small amount (a net total of \$4.21). Of those 53 officers, 44 (83 percent), as shown in table 31, would have received decreased night differential pay of \$500 or less over the entire fiscal year. Overall, the officers would have earned a total of \$14,488 in night differential pay, a reduction of \$17,924 from the amounts they received in fiscal year 1999. Most of the reductions would have come from the top three night shifts¹⁶ regularly scheduled at Baltimore-Washington International Airport. Table 32 shows how much of the difference is accounted for by each of the shifts and, on average, the decrease in night differential pay per shift.

¹⁶The term night shifts as used in this report refers to any shifts qualifying for night differential.

Appendix V: Effects of Proposed Changes on
Officers' Night Differential Pay at Baltimore-
Washington International Airport and
Seaport

Table 31: Decreased Night Differential Pay If Both Sections 123 (a) and (b) Had Been in Effect at the Baltimore Port During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	44	83
\$501 to \$1,000	3	6
\$1,001 to \$2,000	5	9
\$2,001 to \$3,000	1	2
Total	53	100

Source: GAO analysis of the COSS database.

Table 32: Decreased Night Differential Pay Resulting From Proposed Law for Top Three Night Shifts at the Baltimore Port During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)	Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)
1 p.m.-9 p.m.	4	\$1,592.33	\$562.13	\$1,030.20	\$23.77	\$8.39	\$15.38
2 p.m.-10 p.m.	44	24,465.59	10,714.87	13,750.72	20.75	9.09	11.66
3 p.m.-11 p.m.	2	5,218.13	2,605.35	2,612.78	23.40	11.68	11.72

Source: GAO analysis of the COSS database.

Appendix VI: Effects of Proposed Changes on Officers' Night Differential Pay at San Ysidro Land Border Crossing

According to COSS, 310 Customs officers were on the payroll at San Ysidro land border crossing sometime during fiscal year 1999. Of these, 231 officers (75 percent) earned \$495,121 in night differential pay. As shown in the shaded areas in table 33, 93 (40 percent) of these officers earned \$1,000 or less in night differential pay over the fiscal year, and 11 percent earned over \$5,000.

Table 33: Night Differential Pay at San Ysidro Land Border Crossing During Fiscal Year 1999

Amount received	Number of officers	Percent of officers
\$1 to \$500	56	24
\$501 to \$1,000	37	16
\$1,001 to \$2,000	45	19
\$2,001 to \$3,000	24	10
\$3,001 to \$4,000	25	11
\$4,001 to \$5,000	18	8
Over \$5,000	26	11
Total	231	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Section 123 (a) of the proposed legislation would prohibit Customs from paying premium pay, including night differential pay, to officers when they take annual, sick, or other leave and do not actually work those premium pay hours. If that section had been in effect in fiscal year 1999, 202 of the 231 officers that received night differential in fiscal year 1999 would have made less night differential pay (see table 34). Over two-thirds of these officers (69 percent) would have received up to \$500 less. If section 123 (a) only were in effect in fiscal year 1999, San Ysidro Customs officers would have received \$407,084 in night differential pay, \$88,037 less than they received in fiscal year 1999.

Table 34: Decreased Night Differential Pay If Section 123 (a) Only Had Been in Effect at San Ysidro Land Border Crossing During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	140	69
\$501 to \$1,000	36	18
\$1,001 to \$2,000	25	12
\$3,001 to \$4,000	1	<1
Total	202	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Section 123 (b) would reduce the number of available hours in a day for which night differential pay could be earned in two ways: reducing the time period in which officers are eligible to earn night differential pay and eliminating the majority of hours provision. If section 123 (b) only had been in effect in fiscal year 1999, 212 of the 231 officers that earned night differential at San Ysidro would have received less night differential pay. In addition, 50 officers would have ended the fiscal year with net gains in night differential pay. Of these 212 officers, 156 (73 percent), as shown in the shaded areas in table 35, would have had a \$1,000 or less overall reduction in night differential pay. If only section 123 (b) had been in effect, the officers would have made \$350,023 in night differential pay, \$145,098 less than they received in fiscal year 1999.

Table 35: Decreased Night Differential Pay If Section 123 (b) Only Had Been in Effect at San Ysidro Land Border Crossing During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	111	52
\$501 to \$1,000	45	21
\$1,001 to \$2,000	39	18
\$2,001 to \$3,000	12	6
\$3,001 to \$4,000	3	1
\$4,001 to \$5,000	1	<1
Over \$5,000	1	<1
Total	212	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

Had both sections 123 (a) and 123 (b) been in effect in fiscal year 1999, 214 of the 231 officers would have received less night differential pay. Of those 214 officers, 87 (41 percent), as shown in the shaded areas in table 36 below, would have received decreased night differential of more than \$1,000 over the entire fiscal year. Further, 50 officers would have gained a net total of \$10,818 in night differential pay. Overall, the officers would have earned a total of \$293,047 in night differential pay, a reduction of \$202,073 from the amounts they received in fiscal year 1999. Most of the reduction would have come from the top five night¹⁷ shifts regularly scheduled at the San Ysidro Land Border Crossing. Table 37 shows how much of the difference is accounted for by each of the shifts and, on average, the decrease in night differential pay per shift. Likewise, table 38 shows which shifts account for a gain in night differential.

Table 36: Decreased Night Differential Pay If Both Sections 123 (a) and (b) Had Been in Effect at San Ysidro Land Border Crossing During Fiscal Year 1999

Amount of decrease	Number of officers	Percent of officers
\$1 to \$500	93	43
\$501 to \$1,000	34	16
\$1,001 to \$2,000	55	26
\$2,001 to \$3,000	22	10
\$3,001 to \$4,000	8	4
\$4,001 to \$5,000	1	<1
Over \$5,000	1	<1
Total	214	100^a

^aPercentages in this column do not add to 100 percent due to rounding.

Source: GAO analysis of the COSS database.

¹⁷The term night shifts as used in this report refers to any shifts qualifying for night differential pay.

Appendix VI: Effects of Proposed Changes on
Officers' Night Differential Pay at San Ysidro
Land Border Crossing

Table 37: Decreased Night Differential Pay Resulting From Proposed Law for Top Five Night Shifts at San Ysidro Land Border Crossing During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)	Current law (actual)	H.R. 1833 (estimate)	Difference (decrease)
12 a.m.-9 a.m.	97	\$109,986.56	\$83,368.10	\$26,618.46	\$31.93	\$24.20	\$7.73
1:30 p.m.-10:30 p.m.	54	85,682.42	36,718.99	48,963.43	24.14	10.34	13.80
2 p.m.-10 p.m.	82	31,154.47	12,901.39	18,253.08	24.36	10.09	14.27
3 p.m.-12 a.m.	114	111,168.29	63,143.98	48,024.31	23.50	13.35	10.15
4 p.m.-12 a.m.	110	40,851.96	26,199.27	14,652.69	24.22	15.53	8.69

Note: One of the most common night shifts is the 12 a.m.-to-8 a.m. shift. The night differential earned for this shift is preserved in the proposed legislation, however, so there is no change in night differential earned for this shift except when officers are on leave.

Source: GAO analysis of the COSS database.

Table 38: Increased Night Differential Pay Resulting From Proposed Law for Early Morning Shifts at San Ysidro Land Border Crossing During Fiscal Year 1999

Shift hours	No. of officers	Total night differential pay			Average night differential pay per shift, per officer		
		Current law (actual)	H.R. 1833 (estimate)	Difference (increase)	Current law (actual)	H.R. 1833 (estimate)	Difference (increase)
5 a.m.-1 p.m.	52	0	\$2,765.62	\$2,765.62	0	\$3.71	\$3.71
5 a.m.-2 p.m.	56	0	5,014.51	5,014.51	0	3.73	3.73
5:30 a.m.-1:30 p.m.	70	0	4,249.35	4,249.35	0	2.04	2.04
5:30 a.m.-2:30 p.m.	66	0	5,942.40	5,942.40	0	1.96	1.96

Note: These gains in night differential pay are aggregated by shift. While at least 70 officers worked these shifts sometime in fiscal year 1999, only 50 officers would have ended the fiscal year with a net gain in night differential pay.

Source: GAO analysis of the COSS database.

Appendix VII: Comments From the Department of the Treasury



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JAN 16 2001

Ms Laurie Ekstrand
Director, Administration of Justice Issues
U.S. General Accounting Office
Washington, DC 20548

Dear Ms. Ekstrand:

Thank you for the opportunity to review and comment on your draft report entitled U.S. Customs Service: Effects of Proposed Legislation on Officer's Pay.

The Office of Enforcement has reviewed the draft report and is in agreement with the comments submitted to you by the U.S. Customs Service.

If this office can be of further assistance, please do not hesitate to let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Anna F. Dixon".

Anna F. Dixon
Director, Office of Finance and Administration
Office of Enforcement

Appendix VIII: Comments From the U.S. Customs Service



U.S. Customs Service

Memorandum

DATE: JAN 9 2001

FILE: AUD-1-OP BAB

MEMORANDUM FOR LAURIE E. EKSTRAND
GENERAL ACCOUNTING OFFICE

FROM: Director,
Office of Planning

SUBJECT: Draft Audit Report on the United States Customs
Service's Effects of Proposed Legislation on
Officers Pay

Thank you for providing us with a copy of your draft report entitled "Customs Service: Effects of Proposed Legislation on Officers Pay" and the opportunity to discuss the issues in this report.

We believe that any concerns we may have had regarding the audit were addressed through discussions with the audit team. We would like to reiterate that our reluctance to officially comment on provisions of H.R. 1833, which was noted in this report, is consistent with Administration policy, which holds that the Office of Management and Budget is the appropriate Executive Branch entity to issue statements of the Administration's position on legislative matters.

If you have any questions regarding these comments, please contact Ms. Brenda Brockman at (202) 927-1507.

A handwritten signature in black ink, appearing to read "William F. Riley".
William F. Riley

TRADITION



SERVICE



HONOR

Appendix IX: Comments on H.R. 1833 From the National Treasury Employees Union



June 26, 2000

Ms. Laurie E. Ekstrand, Director
Administration of Justice Issues
General Government Division, Room 2A38
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Ekstrand:

The National Treasury Employees Union (NTEU) represents more than 13,000 U.S. Customs Service employees. Almost 8,000 of these employees are inspectors and canine enforcement officers covered by the Customs Officer Pay Reform Act (COPRA). On behalf of these Customs officers, I would like to thank the General Accounting Office for the opportunity to provide input to your review of the potential impact of the enactment of amendments to COPRA in H.R. 1833, as passed by the House of Representatives on May 25, 1999.

COPRA, as enacted in 1994, governs how the Customs inspectional staff receives premium pay for overtime hours and night shift work. The most significant amendment to COPRA in Subtitle C of H.R. 1833, would change the time of day and the number of hours per shift that a Customs officer is eligible to receive a night premium. NTEU adamantly opposes the section of H.R. 1833 that changes the night pay compensation system, because it is ill-conceived and unnecessary. The change would have a devastating impact on employees' salaries and morale.

I. CHANGES TO COPRA NIGHT PAY SYSTEM ARE UNNECESSARY

According to the bill's sponsor, the changes to the night work pay system were discussed and supported in a report released by the Inspector General of the Department of Treasury in September 1996 (hereinafter "IG Report"). At the request of Congressman Charles Rangel, the Treasury Department responded to additional questions surrounding that report. A closer review of the report shows that it contained glaring inaccuracies and misleading information. NTEU believes that the original enactment of COPRA met the intent of Congress and has itself not caused a significant increase in night differential. The need for amendments to the night pay provisions enacted in 1994 are unnecessary.

A. ORIGINAL ENACTMENT OF COPRA

The first intent of the overhaul of the Customs inspectional overtime law (the 1911 Act) that occurred in 1993, was to ensure that hours paid to Customs inspectors for overtime work

bore a more direct relationship to hours worked by the inspectors. This intent is indisputable. Before the enactment of COPRA, the 1911 Act system allowed an inspector to work only a few hours of overtime and to receive several days' pay. The second intent of Congress in enacting COPRA was to ensure that Customs inspectors' schedules met customer demand.

Congressional intent has been satisfied by the implementation of COPRA. The new methodology provides overtime payments to inspectors for those hours that correspond to their overtime hours worked. In addition, the current schedules available at the ports of entry today, including many additional varied shifts and night shifts, correspond to customers' needs.

B. COPRA HAS NOT INCREASED PREMIUM PAY COSTS

In addition to meeting the above stated intentions of Congress, the enactment of COPRA has not increased costs of overall premium payments to Customs inspectors annually. According to Treasury, between 1992 and 1995, the numbers of inspectors increased by 472. Total salaries for inspectors increased by \$48 million or 21%. The additional inspectors increased the payroll by \$17.9 million. The average inspector salary in 1993 was \$36,356, and \$38,855 in 1995. There were 336 more inspectors working for the Customs Service in 1995 than in 1993. Yet the increase in overtime and premium pay between 1993 and 1995 was just \$2.38 million. When offset by increases in within-grade increases, promotions and staffing levels, the overall effect of COPRA was to decrease, not increase, overtime and night pay differentials since its enactment. Additionally, the changes in assignment of shifts, and the addition of new evening and night shifts, has allowed Customs ports of entry to remain open without funding the hours at the overtime rates.

Although, the IG Report stated that the overall implementation of the COPRA has resulted in increased costs to the agency, it failed to consider annual cost increases in its analysis and numbers comparisons. In addition, the IG cannot substantiate its claim that the Customs Service spent \$51,000 on night differentials in FY 1993. This figure is grossly misleading and not documented. The figure \$51,000 does not show how many hours were covered at the night pay premium. In 1993, most inspectors received overtime for work at night, not night pay differential. The COPRA cured this discrepancy by expanding shifts and schedules at many ports. None of this information is included in the IG Report, therefore misleading the reader to compare night differential payments from 1993 and 1995 and concluding that COPRA, in itself, led to additional night differential payments. That conclusion is false.

According to Treasury, COPRA has successfully responded to the problems associated with the 1911 Act compensation method: "For example, 5 years ago, most officers worked an 8 a.m. to 5 p.m. shift and then routinely worked overtime in the evenings. Today, those officers are probably divided between an 8 a.m. and 5 p.m. shift and a 1 p.m. to 9 p.m. shift, or some similar configuration. This would reduce overtime, but increase night differential." (See attached Treasury Response 1/14/00, p. 2). Clearly the IG Report was wrong to attribute increases in night differential payments to the COPRA itself. Any attempt to change this part of the compensation package without assessing the entire field of issues is misguided and wrong.

**II CHANGES TO COPRA NIGHT PAY WOULD NEGATIVELY IMPACT THE
PAY CHECKS AND MORALE AMONG THE CUSTOMS SERVICE
INSPECTIONAL STAFF**

NTEU has communicated with all 61 local NTEU chapters around the country, to discuss the impact of Subtitle C on the pay checks and the morale of the Customs' inspectional ranks. We have received letters and telephone calls from countless inspectors who would be adversely impacted by enactment of night pay changes. The effect of the changes would cost some individuals over \$5,000 per year. We have provided a cursory review of a number of inspectors 1999 schedules and salaries and the corresponding annual losses. The impact will be nationwide and will impact inspectors assigned to sea ports, air ports and land ports. Most inspectors who work night shifts will be impacted negatively, ranging in amounts from less than \$400 per year to over \$5,000 per year. Supervisory inspectors, not represented by NTEU, would lose even more because their grade level is higher.

In many locations, employees are placed on shifts through a bidding process among all eligible inspectors at the port. In most areas, the most senior inspectors receive their first choice of shift. Presently, the night shifts are popular and sought after by the senior inspectors, because the entire shift is paid at a premium rate. The draw to these odd shifts, including 1 p.m. to 9 p.m. and 12 p.m. to 8 p.m. is the increased pay.

Most of the senior inspectors who work the night shifts would not bid for those shifts if the premium was drastically reduced, as it is proposed in H.R. 1833. Should the pay changes be enacted, the senior inspectors would bid for the day shift, and the less senior, new recruits would be forced to work the odd shifts. This newer, less experienced group of employees is less vested in the Customs Service and less apt to continue to work for Customs under an odd shift that does not provide a commensurate premium. Also, this group includes many younger inspectors with young children or single parents, who will be most impacted by difficult childcare arrangements if forced to work the night shifts. Without the added incentive of 15% premium for the entire shift, we believe many inspectors will feel it is not worth continuing to work for Customs once they weigh the reduced salary against the added costs of childcare and added stress of being away from home for those hours.

In addition to retention problems that the reduction in night pay would create, the overall morale of the inspectional ranks will be deeply impacted by the proposed pay cut. The night pay changes in the bill are pay cuts -- plain and simple. Inspectors would perform the same work, within the same time frames, and receive less money for that work. Nothing in the bill would provide a benefit to inspectors to offset this pay cut. It has been noted that the bill would allow the Customs inspectors to remove the \$15,000 premium pay total from the annual \$30,000 overtime cap, thus allowing them to earn more overtime money. However, to earn more overtime pay, the inspector must work additional hours.

Currently, only a small percentage of inspectors reach the \$30,000 annual overtime cap. Only they would benefit from removing their premium pay total from the overtime cap. But, this benefit would come at a price, because they would be forced to sacrifice more of their time away

from their families to earn the additional hours of overtime pay. This is hardly a benefit. It is merely an opportunity to earn more money by working even longer days and weeks. When asked if they see the removal of premium pay from the overtime cap as a benefit, most inspectors respond that it would not help them because they do not reach the cap amount. All agree that this change would not counterbalance the night pay cuts.

Each year, the Customs Service inspectional ranks have been asked to do more work with fewer personnel and resources. Trade and travel has increased at astounding rates, yet Customs inspectional ranks have remained relatively static. More and more, the Customs Service relies on overtime pay to cover the costs of regular shift work during regular hours of operation. The ever increasing number of hours of work assigned to inspectors every week is taking a toll on the health and morale of the officers. They are faced with few days off, sixteen hour days for several days in a row and no end in sight to these grueling schedules. Telling Customs officers that in addition to their increased work load and expanding work schedules, they will receive a pay cut for the nonovertime night shift work they perform, will have a devastating impact on their sense of value to the agency's mission. This pay cut will devastate the pocket books of these dedicated men and women as well as their psyche. During this time of increased threat of terrorism, money laundering and increased trade with large nations, enacting Subtitle C of H.R. 1833 is incomprehensible.

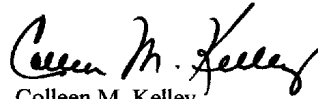
III. PREMIUM PAY WHILE ON LEAVE

Subtitle C provides that "premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay." Premium pay includes night pay, Sunday pay and holiday pay. First, Customs inspectors do not receive Sunday pay rates or holiday pay rates unless they work on the Sunday or holiday. In accordance with the Customs Officer Pay Reform Act of 1993, Customs officers receive night pay differential while on leave status during a night shift. Eliminating this provision for Customs employees is unfair, considering that General Schedule federal employees who regularly work the night shift can receive night differential pay while on leave for up to eight hours per pay period. Wage Grade employees who work under a system more closely related to COPRA receive night differential pay while on leave.

Pay systems for other federal law enforcement officers include sometimes 25% higher pay for officers on an annual basis, including while they are on leave or during weeks that they do not work irregular hours. Unlike many of these law enforcement officers, Customs inspectors do not receive the added incentive of a twenty-year retirement. Night differential pay during scheduled leave is a small remuneration for the arduous and dangerous work they perform regularly and for the sacrifices that they make to work these odd schedules all year. The idea behind vacation or annual leave is that employees continue to be compensated at their rate of pay while away from the work site. It is unfair and illogical to require an inspector who is approved for sick leave or annual leave to take a pay cut for those hours away from work.

Thank you for this opportunity to comment on H.R. 1833 and its impact on inspectional ranks of the Customs Service. If you have questions or comments about NTEU's views on these matters, please feel free to contact me at any time.

Sincerely,



Colleen M. Kelley
National President

Appendix X: GAO Contacts and Staff Acknowledgments

GAO Contacts

Laurie Ekstrand, (202) 512-8777

Darryl Dutton (213) 830-1000

Acknowledgments

In addition to those named above, Samuel Caldrone, Wendy Simkalo, Kathleen Ebert, James Russell, Wendy Ahmed, David Alexander, Nancy Finley, and Katherine Raheb made key contributions to this report.

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